

[COMMITTEE PRINT]

FEBRUARY 4, 1980

[Showing H.R. 4736 with the Amendment in the Nature of a
Substitute Reported by the Subcommittee on Legislation
of the Permanent Select Committee on Intelligence]

96TH CONGRESS
2D SESSION

H. R. 4736

To establish certain pretrial and trial procedures for the use of classified
information in connection with Federal criminal cases, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 1979

Mr. MURPHY of Illinois (for himself, Mr. BOLAND, Mr. MCCLORY, Mr. ZABLOCKI,
Mr. BURLISON, Mr. ASPIN, Mr. ROSE, Mr. MAZZOLI, Mr. MINETA, Mr.
FOWLER, and Mr. DANIELSON) introduced the following bill; which was
referred jointly to the Committee on the Judiciary and the Permanent Select
Committee on Intelligence

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To establish certain pretrial and trial procedures for the use of
classified information in connection with Federal criminal
cases, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

J. 57-268---1

1 That this Act may be cited as the "Classified Information
2 Criminal Trial Procedures Act".

3 TITLE I—PROCEDURES FOR DISCLOSURE OF
4 CLASSIFIED INFORMATION IN CRIMINAL
5 CASES

6 PRETRIAL CONFERENCES

7 SEC. 101. At any time after the filing by the United
8 States of an indictment or information in a United States
9 district court, any party to the case may request a pretrial
10 conference to consider matters relating to classified informa-
11 tion that may arise in connection with the prosecution. Upon
12 such a request, the court shall promptly hold a pretrial con-
13 ference to establish a schedule for any request for discovery
14 of classified information and for the implementation of the
15 procedures established by this title. In addition, at such a
16 pretrial conference the court may consider any other matter
17 which may promote a fair and expeditious trial.

18 PROCEDURES FOR DISCLOSURE OF CLASSIFIED
19 INFORMATION

20 SEC. 102. (a)(1) Whenever a defendant in any Federal
21 prosecution intends to take any action to disclose or cause
22 the disclosure of classified information in any manner in con-
23 nection with such prosecution, the defendant shall, before
24 such disclosure and before the trial or any pretrial hearing,
25 notify the court and the attorney for the United States of

1 such intention and shall not disclose or cause the disclosure
2 of such information unless authorized to do so by the court in
3 accordance with this title. Such notice shall include a brief
4 description of the classified information that is the subject of
5 such notice.

6 (2)(A) Within ten days of receiving a notification under
7 paragraph (1) or otherwise learning before the trial or any
8 pretrial hearing that any action of a defendant will require or
9 is likely to result in the disclosure of classified information at
10 the trial or such pretrial hearing, the United States, by writ-
11 ten petition of the Attorney General, may request the court
12 to conduct a proceeding to make all determinations concern-
13 ing the use, relevance, or admissibility of the classified infor-
14 mation at issue that would otherwise be made during the trial
15 or a pretrial hearing. Upon such a request, the court shall
16 conduct such a proceeding.

17 (B) Any proceeding held pursuant to a request under
18 subparagraph (A) (or any portion of such proceeding specified
19 in the request of the Attorney General) shall be held in
20 camera if the Attorney General certifies to the court in such
21 petition that a public proceeding may result in the disclosure
22 of classified information.

23 (C) If a request for a proceeding under this subsection is
24 not made within ten days or if, at the close of such a proceed-
25 ing, the determination of the court regarding the use, rel-

1 evance, or admissibility of the classified information at issue
2 is favorable to the defendant, the court shall authorize the
3 defendant to disclose or cause the disclosure of the classified
4 information at the trial or at any pretrial hearing, but such
5 disclosure may not be made before the time for the United
6 States to appeal such determination under section 108 has
7 expired. If the United States takes such an appeal, such dis-
8 closure may not be made until such appeal is decided.

9 (b)(1) Whenever a defendant in a Federal prosecution
10 intends to take any action to disclose or cause the disclosure,
11 during the trial or any pretrial hearing, of any classified infor-
12 mation and the defendant has not given notice under subsec-
13 tion (a)(1) with respect to such disclosure because the interest
14 of the defendant in such disclosure reasonably could not have
15 been anticipated before the expiration of the time for giving
16 such notice, the defendant shall, before taking such action,
17 notify the court and the attorney for the United States of
18 such intention and shall not disclose or cause the disclosure
19 of such information unless authorized by the court to do so in
20 accordance with this title. Such notice shall include a brief
21 description of the classified information that is the subject of
22 such notice.

23 (2)(A) Within forty-eight hours of the receipt of a notifi-
24 cation under paragraph (1), the United States, by written pe-
25 tition of the Attorney General, may request the court to con-

1 duet a proceeding to make all determinations concerning the
2 use, relevance, or admissibility of the classified information at
3 issue. Upon such a request, the court shall conduct such a
4 proceeding.

5 (B) Any proceeding held pursuant to a request under
6 subparagraph (A) (or any portion of such proceeding specified
7 in the request of the Attorney General) shall be held in
8 camera if the Attorney General certifies to the court in such
9 petition that a public proceeding may result in the disclosure
10 of classified information.

11 (C) If a request for a proceeding under this subsection is
12 not made within forty-eight hours or if, at the close of such a
13 proceeding, the determination of the court regarding the use,
14 relevance, or admissibility of the classified information at
15 issue is favorable to the defendant, the court, subject to the
16 provisions of section 106, shall authorize the defendant to
17 disclose or cause the disclosure of the classified information
18 at the trial or any pretrial hearing, but such disclosure may
19 not be made before the time for the United States to appeal
20 such determination under section 108 has expired. If the
21 United States takes such an appeal, such disclosure may not
22 be made until such appeal is decided. In any order of the
23 court under this subsection that is favorable to the defendant,
24 the court shall specify the time to be allowed the United
25 States to appeal such order under section 108.

1 (c)(1) Whenever the United States learns during a crimi-
2 nal trial or a pretrial hearing in connection with a criminal
3 trial (other than by notification pursuant to subsection (b)(1))
4 that any action of the defendant will result in, or is likely to
5 result in, the disclosure of classified information which has
6 not been the subject of pretrial notice under subsection (a),
7 the United States, by written petition of the Attorney Gener-
8 al, may request the court to conduct a proceeding to make all
9 determinations concerning the use, relevance, or admissibility
10 of the classified information at issue. Upon such a request,
11 the court shall conduct such a proceeding.

12 (2) Any proceeding held pursuant to a request under
13 paragraph (1) (or any portion of such proceeding specified in
14 the request of the Attorney General) shall be held in camera
15 if the Attorney General certifies to the court in such petition
16 that a public proceeding may result in the disclosure of classi-
17 fied information.

18 (3) If, at the close of a proceeding held pursuant to this
19 subsection, the determination of the court regarding the use,
20 relevance, or admissibility of the classified information at
21 issue is favorable to the defendant, the court, subject to the
22 provisions of section 106, shall authorize the defendant to
23 disclose or cause the disclosure of the classified information
24 at the trial or at any pretrial hearing, but such disclosure
25 may not be made before the time for the United States to

1 appeal such determination under section 108 has expired. If
2 the United States takes such an appeal, such disclosure may
3 not be made until such appeal is decided. In any order of the
4 court under this subsection that is favorable to the defendant,
5 the court shall specify the time to be allowed the United
6 States to appeal such order under section 108.

7 (d) Upon receiving a request from the United States for
8 a proceeding under subsection (a)(2), (b)(2), or (c)(1), the
9 court shall issue an order prohibiting the defendant from dis-
10 closing or causing the disclosure of the classified information
11 at issue pending conclusion of the proceeding.

12 (e) Before any proceeding is conducted pursuant to a
13 request by the United States under subsection (a)(2), (b)(2), or
14 (c)(1), the United States shall provide the defendant with
15 notice of the classified information that is at issue. Such
16 notice shall identify the specific classified information at issue
17 whenever that information previously has been made availa-
18 ble to the defendant by the United States. When the United
19 States has not previously made the information available to
20 the defendant, the information may be described by generic
21 category rather than by identification of the specific informa-
22 tion of concern to the United States.

23 (f) During the examination of a witness by a defendant
24 in any criminal proceeding, the United States may object to
25 any question or line of inquiry that may require the witness

1 to disclose classified information not previously found to be
2 admissible in accordance with the procedures established by
3 this title. Upon such an objection, the court shall take such
4 action to determine whether the response is admissible as
5 will safeguard against the disclosure of any classified infor-
6 mation. Such action may include requiring the United States
7 to provide the court with a proffer of the response of the
8 witness to the question or line of inquiry anticipated by the
9 United States and requiring the defendant to provide the
10 court with a proffer of the nature of the information sought to
11 be elicited.

12 ALTERNATIVE PROCEDURE FOR DISCLOSURE OF
13 CLASSIFIED INFORMATION

14 SEC. 103. (a) Upon any determination by the court au-
15 thorizing the disclosure of specific classified information
16 under the procedures established by section 102, the United
17 States may move that, in lieu of the disclosure of such specif-
18 ic classified information, the court order—

19 (1) the substitution for such classified information
20 of a statement admitting relevant facts that the specific
21 classified information would tend to prove; or

22 (2) the substitution for such classified information
23 of a summary of the specific classified information.

24 The court shall grant such a motion of the United States if it
25 finds that the defendant's right to a fair trial will not be pre-

1 judiced thereby. The court shall hold a hearing on any motion
2 under this section. Any such hearing shall be held in camera
3 at the request of the Attorney General.

4 (b) The United States may, in connection with a motion
5 under subsection (a), submit to the court an affidavit of the
6 Attorney General certifying that disclosure of the classified
7 information would cause identifiable damage to the national
8 security of the United States and explaining the basis for the
9 classification of such information. If so requested by the
10 United States, the court shall examine such affidavit in
11 camera and ex parte.

12 SEALING OF RECORDS OF IN CAMERA PROCEEDINGS

13 SEC. 104. If at the close of an in camera proceeding
14 under this title (or any portion of a proceeding under this title
15 that is held in camera) the court determines that the classi-
16 fied information at issue may not be disclosed or elicited at
17 the trial or any pretrial hearing, the record of such in camera
18 proceeding shall be sealed and preserved by the court for use
19 in the event of an appeal.

20 PROHIBITION ON DISCLOSURE OF CLASSIFIED INFORMA-

21 TION BY DEFENDANT; RELIEF FOR DEFENDANT WHEN

22 UNITED STATES OPPOSES DISCLOSURE

23 SEC. 105. (a) Whenever the court denies a motion by
24 the United States that it issue an order under section 103(a)
25 and the United States files with the court an affidavit of the

1 Attorney General objecting to disclosure of the classified in-
2 formation at issue, the court shall order that the defendant
3 not disclose or cause the disclosure of such information.

4 (b) Whenever a defendant is prevented by an order
5 under subsection (a) from disclosing or causing the disclosure
6 of classified information, the court shall dismiss the indict-
7 ment or information. However, when the court determines
8 that the interests of justice would not be served by dismissal
9 of the indictment or information, the court shall order such
10 other action, in lieu of dismissing the indictment or informa-
11 tion, as the court determines is appropriate. Such action may
12 include—

13 (1) dismissing specified counts of the indictment or
14 information;

15 (2) finding against the United States on any issue
16 as to which the excluded classified information relates;
17 or

18 (3) striking or precluding all or any part of the
19 testimony of a witness.

20 **FAILURE OF DEFENDANT TO PROVIDE PRETRIAL NOTICE**

21 **SEC. 106.** If a defendant fails to comply with the notice
22 requirements of subsection (a) or (b) of section 102 and the
23 court finds that the defendant's need to disclose or cause the
24 disclosure of the classified information at issue reasonably
25 could have been anticipated before the expiration of the time

1 for giving such notice under such subsection, the court may
2 prohibit the defendant from disclosing or causing the disclo-
3 sure of such classified information during trial and may pro-
4 hibit the examination by the defendant of any witness with
5 respect to any such information.

6 RECIPROCITY; DISCLOSURE BY THE UNITED STATES OF
7 REBUTTAL EVIDENCE

8 SEC. 107. (a) Whenever the court determines, in ac-
9 cordance with the procedures prescribed in section 102, that
10 classified information may be disclosed in connection with a
11 criminal trial or pretrial hearing or issues an order pursuant
12 to section 103(a), the court shall—

13 (1) order the United States to provide the defend-
14 ant with the information it expects to use to rebut the
15 particular classified information at issue; and

16 (2) order the United States to provide the defend-
17 ant with the identity of any witness it expects to use
18 to rebut the particular classified information at issue.

19 (b) If the United States fails to comply with an order
20 under subsection (a), the court, unless it finds that the use at
21 trial of information or a witness reasonably could not have
22 been anticipated, may exclude any evidence not made the
23 subject of a required disclosure and may prohibit the exami-
24 nation by the United States of any witness with respect to
25 such information.

1 (c) Whenever the United States requests a pretrial pro-
2 ceeding under section 102, the United States, upon request
3 of the defendant, shall provide the defendant with a bill of
4 particulars as to the portions of the indictment or information
5 which the defendant identifies as related to the classified in-
6 formation at issue in the pretrial proceeding. The bill of par-
7 ticulars shall be provided before such proceeding.

8 APPEALS BY THE UNITED STATES

9 SEC. 108. (a) The United States may appeal to a court
10 of appeals before or during trial from any decision or order of
11 a district court in a criminal case requiring or authorizing the
12 production, disclosure, or use of classified information, impos-
13 ing sanctions for nondisclosure of classified information, or
14 denying the issuance of a protective order sought by the
15 United States to prevent the disclosure of classified informa-
16 tion, if the Attorney General certifies to the district court
17 that the appeal is not taken for purpose of delay.

18 (b)(1) If an appeal under this section is taken before the
19 trial has begun, the appeal shall be taken within ten days
20 after the date of the decision or order appealed from, and the
21 trial shall not commence until the appeal is decided.

22 (2) If an appeal under this section is taken during the
23 trial, the trial court shall adjourn the trial until the appeal is
24 resolved, and the court of appeals (A) shall hear argument on
25 such appeal within four days of the adjournment of the trial,

1 (B) may dispense with written briefs other than the support-
2 ing materials previously submitted to the trial court, (C) shall
3 render its decision within four days of argument on appeal,
4 and (D) may dispense with the issuance of a written opinion
5 in rendering its decision.

6 (e) Any appeal and decision under this section shall not
7 affect the right of the defendant, in a subsequent appeal from
8 a judgment of conviction, to claim as error reversal by the
9 trial court on remand of a ruling appealed from during trial.

10 PROTECTIVE ORDERS

11 SEC. 100. (a) Upon motion of the United States, the
12 court shall issue an order to protect against the disclosure of
13 any classified information disclosed by the United States to
14 any defendant in any criminal case in a district court of the
15 United States.

16 (b) Pursuant to its authority under the Federal Rules of
17 Criminal Procedure, the court may authorize the United
18 States to delete specified items of classified information from
19 documents to be made available to the defendant, to substi-
20 tute a summary of the information for such classified docu-
21 ments; or to substitute a statement admitting relevant facts
22 that the classified information would tend to prove. The
23 motion of the United States requesting such authorization
24 (and materials submitted in support of such motion) shall,

1 upon request of the United States, be considered by the court
2 in camera and shall not be disclosed to the defendant.

3 **SECURITY PROCEDURES**

4 **SEC. 110.** (a) Within one hundred and twenty days of
5 the date of the enactment of this Act, the Supreme Court of
6 the United States, in consultation with the Attorney General
7 and the Director of Central Intelligence, shall prescribe rules
8 establishing procedures for the protection against unauthor-
9 ized disclosure of any classified information in the custody of
10 the United States district courts, courts of appeals, or Su-
11 preme Court. Such rules, and any changes in such rules,
12 shall be submitted to the appropriate committees of Congress
13 and shall become effective forty-five days after such submis-
14 sion.

15 (b) Until such time as rules under subsection (a) first
16 become effective, the Federal courts shall in each case in-
17 volving classified information adopt procedures to protect
18 against the unauthorized disclosure of such information.

19 **IDENTIFICATION OF INFORMATION RELATED TO THE**
20 **NATIONAL DEFENSE**

21 **SEC. 111.** In any prosecution in which the United
22 States must establish as an element of the offense that mate-
23 rial relates to the national defense or constitutes classified
24 information, the United States shall notify the defendant,
25 within the time specified by the court, of the portions of the

15.

1 material that it reasonably expects to rely upon to establish
2 such element of the offense.

3 FUNCTIONS OF ATTORNEY GENERAL MAY BE EXERCISED
4 BY DEPUTY ATTORNEY GENERAL AND A DESIGNATED
5 ASSISTANT ATTORNEY GENERAL

6 SEC. 112. The functions and duties of the Attorney
7 General under this title may be exercised by the Deputy At-
8 torney General and by an Assistant Attorney General desig-
9 nated by the Attorney General for such purpose and may not
10 be delegated to any other official.

11 DEFINITION

12 SEC. 113. As used in this title, the term "classified in-
13 formation" means information or material that is designated
14 and clearly marked or clearly represented, pursuant to the
15 provisions of a statute or Executive order (or a regulation or
16 order issued pursuant to a statute or Executive order), as
17 information requiring a specific degree of protection against
18 unauthorized disclosure for reasons of national security, or
19 information derived therefrom, or any Restricted Data, as de-
20 fined in section 11 y. of the Atomic Energy Act of 1954 (42
21 U.S.C. 2014(y)).

1 **TITLE II—DEPARTMENT OF JUSTICE DECISIONS**
2 **NOT TO PROSECUTE BECAUSE OF POSSIBLE**
3 **DISCLOSURE OF CLASSIFIED INFORMATION**
4 **GUIDELINES PRESCRIBED BY THE ATTORNEY GENERAL.**

5 **SEC. 201.** Within ninety days of the date of the enact-
6 ment of this Act, the Attorney General shall issue guidelines
7 specifying the factors to be used by the Department of Jus-
8 tice in deciding whether to prosecute a violation of Federal
9 law in which there is a possibility that classified information
10 will be disclosed. Such guidelines shall be promptly transmit-
11 ted to the appropriate committees of the Congress.

12 **PREPARATION OF FINDINGS WHEN DECISION NOT TO**
13 **PROSECUTE IS MADE**

14 **SEC. 202. (a)** Whenever the United States decides not
15 to prosecute any individual for a violation of Federal law
16 because there is a possibility that classified information will
17 be revealed, an appropriate official of the Department of Jus-
18 tice shall prepare written findings detailing the reasons for
19 the decision not to prosecute such individual. The findings
20 shall be prepared within thirty days of the date on which the
21 decision not to prosecute is made and shall include—

22 (1) the classified information which the United
23 States believes might be disclosed;

24 (2) the purpose for which the information might
25 be disclosed;

1 (3) the probability that the information would be
2 disclosed in the event of a prosecution; and

3 (4) the possible consequences such disclosure
4 would have on the national security.

5 (b) All findings under subsection (a) shall be promptly
6 reported to the Permanent Select Committee on Intelligence
7 of the House of Representatives and the Select Committee
8 on Intelligence of the Senate.

9 *That this Act may be cited as the "Classified Information*
10 *Criminal Trial Procedures Act".*

11 **TITLE I—PROCEDURES FOR DISCLOSURE OF**
12 **CLASSIFIED INFORMATION IN CRIMINAL**
13 **CASES**

14 **PRETRIAL CONFERENCES**

15 **SEC. 101.** *At any time after the filing by the United*
16 *States of an indictment or information in a United States*
17 *district court, any party to the case may request a pretrial*
18 *conference to consider matters relating to classified informa-*
19 *tion that may arise in connection with the prosecution. Upon*
20 *such a request, the court shall promptly hold a pretrial con-*
21 *ference to establish a schedule for any request for discovery of*
22 *classified information and for the implementation of the pro-*
23 *cedures established by this title. In addition, at such a pre-*
24 *trial conference the court may consider any other matter*
25 *which may promote a fair and expeditious trial. No admis-*

1 sion made by the defendant or by any attorney for the de-
2 fendant at such a conference may be used against the defend-
3 ant unless the admission is in writing and is signed by the
4 defendant and by the attorney for the defendant.

5 *PROCEDURES FOR DISCLOSURE OF CLASSIFIED*
6 *INFORMATION*

7 *SEC. 102. (a)(1) Whenever a defendant in any Federal*
8 *prosecution intends to take any action to disclose or cause the*
9 *disclosure of classified information in any manner in connec-*
10 *tion with such prosecution, the defendant shall, before such*
11 *disclosure and before the trial or any pretrial hearing, notify*
12 *the court and the attorney for the United States of such in-*
13 *tention and shall not disclose or cause the disclosure of such*
14 *information unless authorized to do so by the court in accord-*
15 *ance with this title. Such notice shall include a brief descrip-*
16 *tion of the classified information that is the subject of such*
17 *notice.*

18 (2)(A) *Within ten days of receiving a notification under*
19 *paragraph (1), the United States, by written petition of the*
20 *Attorney General, may request the court to conduct a pro-*
21 *ceeding to make all determinations concerning the use, rel-*
22 *evance, or admissibility of the classified information at issue*
23 *that would otherwise be made during the trial or a pretrial*
24 *hearing. Upon such a request, the court shall conduct such a*
25 *proceeding.*

1 (B) Any proceeding held pursuant to a request under
2 subparagraph (A) (or any portion of such proceeding speci-
3 fied in the request of the Attorney General) shall be held in
4 camera if the Attorney General certifies to the court in such
5 petition that a public proceeding may result in the disclosure
6 of classified information.

7 (C) If a request for a proceeding under this subsection
8 is not made within ten days or if, at the close of such a
9 proceeding, the determination of the court regarding the use,
10 relevance, or admissibility of the classified information at
11 issue is favorable to the defendant, the court shall authorize
12 the defendant to disclose or cause the disclosure of the classi-
13 fied information at the trial or at any pretrial hearing, but
14 such disclosure may not be made before the time for the
15 United States to appeal such determination under section
16 108 has expired. If the United States takes such an appeal,
17 such disclosure may not be made until such appeal is decid-
18 ed.

19 (b)(1) Whenever a defendant in a Federal prosecution
20 intends to take any action to disclose or cause the disclosure,
21 during the trial or any pretrial hearing, of any classified
22 information and the defendant has not given notice under
23 subsection (a)(1) with respect to such disclosure because the
24 interest of the defendant in such disclosure reasonably could
25 not have been anticipated before the expiration of the time for

1 *giving such notice, the defendant shall, before taking such*
2 *action, notify the court and the attorney for the United States*
3 *of such intention and shall not disclose or cause the disclo-*
4 *sure of such information unless authorized by the court to do*
5 *so in accordance with this title. Such notice shall include a*
6 *brief description of the classified information that is the sub-*
7 *ject of such notice.*

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9 *cation under paragraph (1), the United States, by written*
10 *petition of the Attorney General, may request the court to*
11 *conduct a proceeding to make all determinations concerning*
12 *the use, relevance, or admissibility of the classified informa-*
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14 *such a proceeding.*

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16 *subparagraph (A) (or any portion of such proceeding speci-*
17 *fied in the request of the Attorney General) shall be held in*
18 *camera if the Attorney General certifies to the court in such*
19 *petition that a public proceeding may result in the disclosure*
20 *of classified information.*

21 (C) *If a request for a proceeding under this subsection*
22 *is not made within forty-eight hours or if, at the close of such*
23 *a proceeding, the determination of the court regarding the*
24 *use, relevance, or admissibility of the classified information*
25 *at issue is favorable to the defendant, the court, subject to the*

1 provisions of section 106, shall authorize the defendant to
2 disclose or cause the disclosure of the classified information
3 at the trial or any pretrial hearing, but such disclosure may
4 not be made before the time for the United States to appeal
5 such determination under section 108 has expired. If the
6 United States takes such an appeal, such disclosure may not
7 be made until such appeal is decided. In any order of the
8 court under this subsection that is favorable to the defendant,
9 the court shall specify the time to be allowed the United
10 States to appeal such order under section 108.

11 (c)(1) At any time before or during trial the United
12 States, by written petition of the Attorney General, may re-
13 quest the court to conduct a proceeding to make all determi-
14 nations concerning the use, relevance, or admissibility of
15 classified information which has not been the subject of
16 notice under subsection (a)(1) or (b)(1). Upon such a request,
17 the court shall conduct such a proceeding.

18 (2) Any proceeding held pursuant to a request under
19 paragraph (1) (or any portion of such proceeding specified in
20 the request of the Attorney General) shall be held in camera
21 if the Attorney General certifies to the court in such petition
22 that a public proceeding may result in the disclosure of clas-
23 sified information.

24 (3) If, at the close of a proceeding held pursuant to this
25 subsection, the determination of the court regarding the use,

1 *relevance, or admissibility of the classified information at*
2 *issue is favorable to the defendant, the court, subject to the*
3 *provisions of section 106, shall authorize the defendant to*
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2 *generic category, in such form as the court may approve,*
3 *rather than by identification of the specific information of*
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11 *action to determine whether the response is admissible as will*
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17 *a proffer of the nature of the information sought to be elicited.*

18 *ALTERNATIVE PROCEDURE FOR DISCLOSURE OF*

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2 of a statement admitting relevant facts that the specific
3 classified information would tend to prove; or

4 (2) the substitution for such classified information
5 of a summary of the specific classified information.

6 The court shall grant such a motion of the United States if it
7 finds that the statement or summary will provide the defend-
8 ant with substantially the same ability to make his defense
9 as would disclosure of the specified classified information.
10 The court shall hold a hearing on any motion under this
11 section. Any such hearing shall be held in camera at the
12 request of the Attorney General.

13 (b) The United States may, in connection with a motion
14 under subsection (a), submit to the court an affidavit of the
15 Attorney General certifying that disclosure of the classified
16 information would cause identifiable damage to the national
17 security of the United States and explaining the basis for the
18 classification of such information. If so requested by the
19 United States, the court shall examine such affidavit in
20 camera and ex parte.

21 SEALING OF RECORDS OF IN CAMERA PROCEEDINGS

22 SEC. 104. If at the close of an in camera proceeding
23 under this title (or any portion of a proceeding under this
24 title that is held in camera) the court determines that the
25 classified information at issue may not be disclosed or elic-

1 *ited at the trial or any pretrial hearing, the record of such in*
2 *camera proceeding shall be sealed and preserved by the court*
3 *for use in the event of an appeal.*

4 *PROHIBITION ON DISCLOSURE OF CLASSIFIED INFORMA-*
5 *TION BY DEFENDANT; RELIEF FOR DEFENDANT*
6 *WHEN UNITED STATES OPPOSES DISCLOSURE*

7 *SEC. 105. (a) Whenever the court denies a motion by*
8 *the United States that it issue an order under section 103(a)*
9 *and the United States files with the court an affidavit of the*
10 *Attorney General objecting to disclosure of the classified in-*
11 *formation at issue, the court shall order that the defendant*
12 *not disclose or cause the disclosure of such information.*

13 *(b) Whenever a defendant is prevented by an order*
14 *under subsection (a) from disclosing or causing the disclosure*
15 *of classified information, the court shall dismiss the indict-*
16 *ment or information; except that, when the court determines*
17 *that the interests of justice would not be served by dismissal*
18 *of the indictment or information, the court shall order such*
19 *other action, in lieu of dismissing the indictment or informa-*
20 *tion, as the court determines is appropriate. Such action may*
21 *include—*

22 *(1) dismissing specified counts of the indictment*
23 *or information;*

1 (2) *finding against the United States on any*
2 *issue as to which the excluded classified information*
3 *relates; or*

4 (3) *striking or precluding all or any part of the*
5 *testimony of a witness.*

6 **FAILURE OF DEFENDANT TO PROVIDE PRETRIAL NOTICE**

7 *SEC. 106. If a defendant fails to comply with the notice*
8 *requirements of subsection (a) or (b) of section 102 and the*
9 *court finds that the defendant's need to disclose or cause the*
10 *disclosure of the classified information at issue reasonably*
11 *could have been anticipated before the expiration of the time*
12 *for giving such notice under such subsection, the court may*
13 *prohibit the defendant from disclosing or causing the disclo-*
14 *sure of such classified information during trial and may pro-*
15 *hibit the examination by the defendant of any witness with*
16 *respect to any such information.*

17 **RECIPROCITY; DISCLOSURE BY THE UNITED STATES OF**
18 **REBUTTAL EVIDENCE**

19 *SEC. 107. (a) Whenever the court determines, in ac-*
20 *cordance with the procedures prescribed in section 102, that*
21 *classified information may be disclosed in connection with a*
22 *criminal trial or pretrial hearing or issues an order pursuant*
23 *to section 103(a), the court shall—*

1 (1) order the United States to provide the defend-
2 ant with the information it expects to use to rebut the
3 particular classified information at issue; and

4 (2) order the United States to provide the defend-
5 ant, three days before trial, with the identity of any
6 witness it expects to use to rebut the particular classi-
7 fied information at issue, except that upon a sufficient
8 showing by either party, the court shall not order the
9 provision of such identity or shall order its provision at
10 another time.

11 (b) If the United States fails to comply with an order
12 under subsection (a), the court, unless it finds that the use at
13 trial of information or a witness reasonably could not have
14 been anticipated, may exclude any evidence not made the
15 subject of a required disclosure and may prohibit the exami-
16 nation by the United States of any witness with respect to
17 such information.

18 (c) Whenever the United States requests a pretrial pro-
19 ceeding under section 102, the United States, upon request of
20 the defendant, shall provide the defendant with a bill of par-
21 ticulars as to the portions of the indictment or information
22 which the defendant identifies as related to the classified
23 information at issue in the pretrial proceeding. The bill of
24 particulars shall be provided before such proceeding.

1 (d) *The provisions of this section shall not apply to clas-*
2 *sified information provided by the United States to the*
3 *defendant pursuant to a discovery request, unless the court*
4 *determines that the interests of fairness so require.*

5 *APPEALS BY THE UNITED STATES*

6 *SEC. 108. (a) The United States may appeal to a court*
7 *of appeals before or during trial from any decision or order of*
8 *a district court in a criminal case requiring or authorizing*
9 *the production, disclosure, or use of classified information,*
10 *imposing sanctions for nondisclosure of classified informa-*
11 *tion, or denying the issuance of a protective order sought by*
12 *the United States to prevent the disclosure of classified infor-*
13 *mation, if the Attorney General certifies to the district court*
14 *that the appeal is not taken for purpose of delay.*

15 (b)(1) *If an appeal under this section is taken before the*
16 *trial has begun, the appeal shall be taken within ten days*
17 *after the date of the decision or order appealed from, and the*
18 *trial shall not commence until the appeal is decided.*

19 (2) *If an appeal under this section is taken during the*
20 *trial, the trial court shall adjourn the trial until the appeal is*
21 *resolved, and the court of appeals (A) shall hear argument on*
22 *such appeal within four days of the adjournment of the trial,*
23 *(B) may dispense with written briefs other than the support-*
24 *ing materials previously submitted to the trial court, (C)*
25 *shall render its decision within four days of argument on*

1 *appeal, and (D) may dispense with the issuance of a written*
2 *opinion in rendering its decision.*

3 *(c) Any appeal and decision under this section shall not*
4 *affect the right of the defendant, in a subsequent appeal from*
5 *a judgment of conviction, to claim as error reversal by the*
6 *trial court on remand of a ruling appealed from during trial.*

7 *PROTECTIVE ORDERS; DISCOVERY; INTRODUCTION OF*
8 *EVIDENCE*

9 *SEC. 109. (a) Upon motion of the United States, the*
10 *court shall issue an order to protect against the disclosure of*
11 *any classified information disclosed by the United States to*
12 *any defendant in any criminal case in a district court of the*
13 *United States.*

14 *(b) Whenever the court determines pursuant to rule 16*
15 *of the Federal Rules of Criminal Procedure that the defend-*
16 *ant is entitled to discover or inspect documents or materials*
17 *containing classified information, the court shall authorize*
18 *the United States to delete classified information from the*
19 *documents or materials to be made available to the defendant,*
20 *to substitute a summary of the classified information, or to*
21 *substitute a statement admitting relevant facts that the classi-*
22 *fied information would tend to prove, if the court finds that*
23 *such action will provide the defendant with substantially the*
24 *same ability to prepare for trial or make his defense as would*
25 *disclosure of the specific classified information. The court*

1 may permit the United States to make a request for such
2 authorization in the form of a written statement to be inspect-
3 ed by the court alone. If the court enters an order granting
4 relief following such an ex parte showing, the entire text of
5 the statement of the United States shall be sealed and pre-
6 served in the records of the court to be made available to the
7 appellate court in the event of an appeal.

8 (c) Writings, recordings, and photographs containing
9 classified information may be admitted into evidence without
10 change in their classification status.

11 (d) When a writing or recorded statement (or a part
12 thereof) is introduced into evidence by the United States, the
13 court, upon motion of the defendant, may require the United
14 States at that time to introduce any other writing or recorded
15 statement (or any other part of the statement introduced)
16 which ought in fairness to be considered contemporaneously
17 with the statement introduced and which is relevant to the
18 defendant's case. If such other writing or recorded statement,
19 or such other part, contains classified information, the court,
20 at the request of the United States, shall conduct the hearing
21 on the defendant's motion in camera. If, at the conclusion of
22 such hearing, the court requires the United States to intro-
23 duce classified information, the procedures of section 103
24 shall apply.

1 (e) *The United States may notify the court and the de-*
2 *fendant before trial if it intends to introduce during the trial*
3 *only a part of a writing or recorded statement containing*
4 *classified information. Upon such notification, the court*
5 *shall conduct, before the trial, an in camera proceeding to*
6 *make the determinations required by section 109(d).*

7 SECURITY PROCEDURES

8 SEC. 110. (a) *Within one hundred and twenty days of*
9 *the date of the enactment of this Act, the Chief Justice of the*
10 *United States, in consultation with the Attorney General*
11 *and the Director of Central Intelligence, shall prescribe rules*
12 *establishing procedures for the protection against unauthor-*
13 *ized disclosure of any classified information in the custody of*
14 *the United States district courts, courts of appeals, or Su-*
15 *preme Court. Such rules, and any changes in such rules,*
16 *shall be submitted to the appropriate committees of Congress*
17 *and shall become effective forty-five days after such*
18 *submission.*

19 (b) *Until such time as rules under subsection (a) first*
20 *become effective, the Federal courts shall in each case involv-*
21 *ing classified information adopt procedures to protect against*
22 *the unauthorized disclosure of such information.*

1 *IDENTIFICATION OF INFORMATION RELATED TO THE*
2 *NATIONAL DEFENSE*

3 *SEC. 111. In any prosecution in which the United*
4 *States must establish as an element of the offense that mate-*
5 *rial relates to the national defense or constitutes classified*
6 *information, the United States shall notify the defendant, at*
7 *the time of the pretrial conference or, if no such conference is*
8 *held, at a time before trial specified by the court, of the por-*
9 *tions of the material that it reasonably expects to rely upon to*
10 *establish such element of the offense.*

11 *FUNCTIONS OF ATTORNEY GENERAL MAY BE EXERCISED*
12 *BY DEPUTY ATTORNEY GENERAL AND A DESIGNAT-*
13 *ED ASSISTANT ATTORNEY GENERAL*

14 *SEC. 112. The functions and duties of the Attorney*
15 *General under this title may be exercised by the Deputy At-*
16 *torney General and by an Assistant Attorney General desig-*
17 *nated by the Attorney General for such purpose and may not*
18 *be delegated to any other official.*

19 *DEFINITION*

20 *SEC. 113. As used in this title, the term "classified*
21 *information" means information or material that is designat-*
22 *ed and clearly marked or clearly represented, pursuant to the*
23 *provisions of a statute or Executive order (or a regulation or*
24 *order issued pursuant to a statute or Executive order), as*
25 *information requiring a specific degree of protection against*

1 *unauthorized disclosure for reasons of national security or*
2 *any Restricted Data, as defined in section 11 y. of the*
3 *Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).*

4 *TITLE II—GUIDELINES AND REPORTS*

5 *GUIDELINES PRESCRIBED BY THE ATTORNEY GENERAL*

6 *SEC. 201. Within ninety days of the date of the enact-*
7 *ment of this Act, the Attorney General shall issue guidelines*
8 *specifying the factors to be used by the Department of Justice*
9 *in deciding whether to prosecute a violation of Federal law in*
10 *which there is a possibility that classified information will be*
11 *disclosed. Such guidelines shall be promptly transmitted to*
12 *the appropriate committees of the Congress.*

13 *ANNUAL REPORT TO CONGRESS BY THE ATTORNEY*

14 *GENERAL*

15 *SEC. 202. The Attorney General shall report to the*
16 *Select Committee on Intelligence of the Senate and the Per-*
17 *manent Select Committee on Intelligence of the House of*
18 *Representatives once each year concerning the operation and*
19 *effectiveness of this Act. Such report shall include summaries*
20 *of those cases in which a decision not to prosecute or not to*
21 *continue a prosecution was made because of the possibility*
22 *that classified information would be disclosed.*

1 *BIANNUAL REPORT TO CONGRESS BY THE JUDICIAL*
2 *CONFERENCE OF THE UNITED STATES*

3 *SEC. 203. Before the end of the three-year period begin-*
4 *ning on the date of the enactment of this Act, and once every*
5 *two years thereafter, the Judicial Conference of the United*
6 *States may report to the appropriate committees of Congress*
7 *concerning the operation of this Act. Any such report shall*
8 *include an analysis and recommendation concerning whether*
9 *this Act should be amended or repealed or should remain in*
10 *effect without amendment.*

11 *TITLE III—EFFECTIVE DATE*

12 *SEC. 301. The provisions of this Act shall become effec-*
13 *tive upon the date of the enactment of this Act, but shall not*
14 *apply to any prosecution in which an indictment or informa-*
15 *tion was filed before such date.*

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